

# Utah Code Ann., Title 31A Chapter 31 -- Insurance Fraud Act

## **31A-31-101 Title.**

This chapter may be cited as the "Insurance Fraud Act."

*Enacted by Chapter 243, 1994 General Session*

## **31A-31-102 Definitions.**

As used in this chapter:

- (1) "Authorized agency" means:
  - (a) the attorney general;
  - (b) the state fire marshal;
  - (c) any state law enforcement agency;
  - (d) any criminal investigative department or agency of the United States;
  - (e) a district attorney;
  - (f) the prosecuting attorney of any municipality or county;
  - (g) the department; or
  - (h) the disciplinary section of an agency licensing a service provider.
- (2) "Financial loss" includes:
  - (a) out-of-pocket expenses;
  - (b) reasonable attorney fees;
  - (c) repair and replacement costs; or
  - (d) claims payments.
- (3) "Insurer" means any person or aggregation of persons:
  - (a) doing insurance business, as defined in Section 31A-1-301; or
  - (b) subject to the supervision of the commissioner under:
    - (i) this title; or
    - (ii) any equivalent insurance supervisory official of another state.
- (4) "Knowingly" has the same meaning as in Subsection 76-2-103(2).
- (5) "Person" means an individual, firm, company, corporation, association, limited liability company, partnership, organization, society, business trust, service provider, or any other legal entity.
- (6) (a) "Runner" means a person who procures clients at the direction of, or in cooperation with a person who intends to:
  - (i) perform or obtain a service or benefit under a contract of insurance; or
  - (ii) assert a claim against an insured.
- (b) "Runner" includes:
  - (i) a capper; or
  - (ii) a steerer.
- (7) "Service provider" means:
  - (a) an individual licensed to practice law;
  - (b) an individual licensed or certified by the state under:
    - (i) this title;
    - (ii) Title 41, Chapter 3, Motor Vehicle Business Regulation Act;
    - (iii) Title 58, Occupations and Professions; or
    - (iv) Title 61, Securities Division - Real Estate Division;
  - (c) an individual licensed in another jurisdiction in a manner similar to a license described in Subsection (7)(a) or (b);
  - (d) an individual practicing any nonmedical treatment rendered in accordance with a recognized religious method of healing; or

(e) a hospital, health care facility, or person whose services are compensated directly or indirectly by insurance.

(8) "Statement" includes any:

- (a) (i) notice;
- (ii) statement;
- (iii) proof of loss;
- (iv) bill of lading;
- (v) receipt for payment;
- (vi) invoice;
- (vii) account;
- (viii) estimate of property damage;
- (ix) bill for services;
- (x) diagnosis;
- (xi) prescription;
- (xii) hospital or doctor record;
- (xiii) x-ray;
- (xiv) test result; or
- (xv) other evidence of loss, injury, or expense; or
- (b) item listed in Subsection (8)(a) that is a computer-generated document.

*Amended by Chapter 104, 2004 General Session*

### **31A-31-103 Fraudulent insurance act.**

(1) A person commits a fraudulent insurance act if that person with intent to deceive or defraud:

(a) knowingly presents or causes to be presented to an insurer any oral or written statement or representation knowing that the statement or representation contains false, incomplete, or misleading information concerning any fact material to an application for the issuance or renewal of an insurance policy, certificate, or contract;

(b) knowingly presents or causes to be presented to an insurer any oral or written statement or representation:

(i) (A) as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, certificate, or contract; or

(B) in connection with any civil claim asserted for recovery of damages for personal or bodily injuries or property damage; and

(ii) knowing that the statement or representation contains false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance act;

(d) assists, abets, solicits, or conspires with another to commit a fraudulent insurance act;

(e) knowingly supplies false or fraudulent material information in any document or statement required by the department;

(f) knowingly fails to forward a premium to an insurer in violation of Section 31A-23a-411.1; or

(g) knowingly employs, uses, or acts as a runner for the purpose of committing a fraudulent insurance act.

(2) A service provider commits a fraudulent insurance act if that service provider with intent to deceive or defraud:

(a) knowingly submits or causes to be submitted a bill or request for payment:

(i) containing charges or costs for an item or service that are substantially in excess of customary charges or costs for the item or service; or

(ii) containing itemized or delineated fees for what would customarily be considered a single procedure or service;

- (b) knowingly furnishes or causes to be furnished an item or service to a person:
    - (i) substantially in excess of the needs of the person; or
    - (ii) of a quality that fails to meet professionally recognized standards;
  - (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance act; or
  - (d) assists, abets, solicits, or conspires with another to commit a fraudulent insurance act.
- (3) An insurer commits a fraudulent insurance act if that insurer with intent to deceive or defraud:
- (a) knowingly withholds information or provides false or misleading information with respect to an application, coverage, benefits, or claims under a policy or certificate;
  - (b) assists, abets, solicits, or conspires with another to commit a fraudulent insurance act;
  - (c) knowingly accepts a benefit from the proceeds derived from a fraudulent insurance act; or
  - (d) knowingly supplies false or fraudulent material information in any document or statement required by the department.
- (4) An insurer or service provider is not liable for any fraudulent insurance act committed by an employee without the authority of the insurer or service provider unless the insurer or service provider knew or should have known of the fraudulent insurance act.

*Amended by Chapter 104, 2004 General Session*

### **31A-31-104 Disclosure of information.**

- (1) (a) Subject to Subsection (2), upon written request by an insurer to an authorized agency, the authorized agency may release to the insurer information or evidence that is relevant to any suspected insurance fraud.
- (b) Upon written request by an authorized agency to an insurer, the insurer or an agent authorized by the insurer to act on the insurer's behalf shall release to the authorized agency information or evidence that is relevant to any suspected insurance fraud.
- (2) (a) Any information or evidence furnished to an authorized agency under this section may be classified as a protected record in accordance with Subsection 63-2-304(9).
- (b) Any information or evidence furnished to an insurer under this section is not subject to discovery in a civil proceeding unless, after reasonable notice to any insurer, agent, or any authorized agency that has an interest in the information and subsequent hearing, a court determines that the public interest and any ongoing criminal investigation will not be jeopardized by the disclosure.
- (c) An insurer shall report to the department agency terminations based upon a violation of this chapter.

*Amended by Chapter 97, 2002 General Session*

### **31A-31-105 Immunity.**

- (1) A person, insurer, or authorized agency is immune from civil action, civil penalty, or damages when in good faith that person, insurer, or authorized agency cooperates with, furnishes evidence, provides or receives information regarding suspected insurance fraud to or received from:
- (a) the department or any division of the department;
  - (b) any federal, state, or government agency established to detect and prevent insurance fraud; or
  - (c) any agent, employee, or designee of an entity listed in Subsection (1)(a) or (1)(b).
- (2) A person, insurer, or authorized agency is immune from civil action, civil penalty, or damages if that person, insurer, or authorized agency complies in good faith with a court order to provide evidence or testimony requested by the entities described in Subsections (1)(a) through (1)(c).
- (3) This section does not abrogate or modify common law or statutory rights, privileges, or immunities enjoyed by any person or entity.
- (4) Notwithstanding any other provision in this section, a person, insurer, or service provider is not immune from civil action, civil penalty or damages under this section if that person commits the fraudulent insurance act that

is the subject of the information.

*Enacted by Chapter 243, 1994 General Session*

### **31A-31-106 Disciplinary action.**

(1) If, after giving notice and a hearing conducted pursuant to Title 63, Chapter 46b, Administrative Procedures Act, the commissioner finds by a preponderance of the evidence that a person licensed under Title 31A has committed a fraudulent insurance act, the commissioner may suspend or revoke the license issued under Title 31A.

(2) If the appropriate licensing authority finds by a preponderance of the evidence that a service provider violated Section 31A-31-103, the service provider is subject to revocation or suspension of the service provider's license.

(3) The commissioner may notify the appropriate licensing authority of conduct by a service provider that the commissioner believes may constitute a fraudulent insurance act.

*Amended by Chapter 20, 1995 General Session*

### **31A-31-107 Workers' compensation insurance fraud.**

In any action involving workers' compensation insurance, Section 34A-2-110 supersedes this chapter.

*Amended by Chapter 375, 1997 General Session*

### **31A-31-108 Assessment of insurers.**

(1) For purposes of this section:

(a) The commissioner shall by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, define:

- (i) "annuity consideration";
- (ii) "membership fees";
- (iii) "other fees";
- (iv) "deposit-type contract funds"; and
- (v) "other considerations in Utah."

(b) "Utah consideration" means:

- (i) the total premiums written for Utah risks;
- (ii) annuity consideration;
- (iii) membership fees collected by the insurer;
- (iv) other fees collected by the insurer;
- (v) deposit-type contract funds; and
- (vi) other considerations in Utah.

(c) "Utah risks" means insurance coverage on the lives, health, or against the liability of persons residing in Utah, or on property located in Utah, other than property temporarily in transit through Utah.

(2) To implement this chapter, Section 34A-2-110, and Section 76-6-521, the commissioner may assess each admitted insurer and each nonadmitted insurer transacting insurance under Chapter 15, Parts 1 and 2, an annual fee as follows:

(a) \$150 for an insurer if the sum of the Utah consideration for that insurer is less than or equal to \$1,000,000;

(b) \$400 for an insurer if the sum of the Utah consideration for that insurer is greater than \$1,000,000 but is less than or equal to \$2,500,000;

(c) \$700 for an insurer if the sum of the Utah consideration for that insurer is greater than \$2,500,000 but is

less than or equal to \$5,000,000;

(d) \$1,350 for an insurer if the sum of the Utah consideration for that insurer is greater than \$5,000,000 but less than or equal to \$10,000,000;

(e) \$5,150 for an insurer if the sum of the Utah consideration for that insurer is greater than \$10,000,000 but less than \$50,000,000; and

(f) \$12,350 for an insurer if the sum of the Utah consideration for that insurer equals or exceeds \$50,000,000.

(3) (a) All money received by the state under this section shall be deposited in the General Fund as a dedicated credit of the department for the purpose of providing funds to pay for any costs and expenses incurred by the department in the administration, investigation, and enforcement of this chapter, Section 34A-2-110, and Section 76-6-521.

(b) All monies received by the department to pay for the costs and expenses incurred by the department in the administration, investigation, and enforcement of this chapter, Section 34A-2-110, and Section 76-6-521 shall be nonlapsing.

*Amended by Chapter 104, 2004 General Session*

### **31A-31-109 Civil penalties.**

(1) In addition to other penalties provided by law, a person who violates this chapter:

(a) is subject to the following civil penalties:

(i) the person shall make full restitution; and

(ii) the person shall pay the costs of enforcement of this chapter for the case in which the person is found to have violated this chapter:

(A) as determined by the one or more authorized agencies involved; and

(B) including costs of:

(I) investigators;

(II) attorneys; and

(III) other public employees; and

(b) in the discretion of the court, may be required to pay to the state a civil penalty not to exceed three times that amount of value improperly sought or received from the fraudulent insurance act.

(2) (a) Monies paid under Subsection (1)(a)(i) shall be paid to the person damaged by the fraudulent insurance act.

(b) Monies paid under Subsection (1)(a)(ii) shall be paid to each applicable authorized agency in the following order:

(i) to the General Fund as a dedicated credit of the department for the costs of enforcement incurred by the department;

(ii) to the General Fund for the costs of enforcement incurred by a state agency other than the department;

(iii) to the applicable political subdivision for the costs of enforcement incurred by the political subdivision; and

(iv) to the applicable criminal investigative department or agency of the United States for the costs of enforcement incurred by the department or agency.

(c) Monies paid under Subsection (1)(b) shall be paid into the General Fund.

(d) Monies received by the department under this Subsection (2) are nonlapsing in accordance with Subsection 31A-31-108(3).

(3) (a) A civil penalty assessed under Subsection (1) shall be awarded by the court as part of its judgment in both criminal and civil actions.

(b) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

**31A-31-110 Mandatory reporting of fraudulent title insurance acts -- Failure to report -- Criminal penalties.**

(1) An auditor that is employed by a title insurer and that has knowledge that a fraudulent insurance act is being, will be, or has been committed related to title insurance shall report the fraudulent act to the commissioner in a writing that provides information in detail relating to:

- (a) the fraudulent insurance act; and
- (b) the perpetrator of the fraudulent insurance act.

(2) (a) Any auditor required to report a fraudulent insurance act under Subsection (1) who willfully fails to comply with Subsection (1) is guilty of a class B misdemeanor.

(b) An action for failure to comply with Subsection (1) shall be commenced within four years from the date on which the auditor employed by the title insurer:

- (i) had knowledge of the fraudulent insurance act; and
- (ii) willfully failed to report the fraudulent insurance act.

*Enacted by Chapter 104, 2004 General Session*

**31A-31-111 Health discount program fraud.**

(1) In addition to any other fraudulent acts prohibited by this chapter, a person commits a fraudulent insurance act if that person with intent to deceive or defraud:

- (a) accepts fees, dues, charges, or other consideration for providing a health discount program as defined in Section 31A-8a-102 without having health care providers under contract who have agreed to provide the discounts promised to enrollees; or
- (b) operates a health discount program without complying with the provisions of Section 31A-8a-201.

(2) In addition to any other civil penalties or remedies provided by law, a person who violates this section is guilty of a third degree felony.

*Enacted by Chapter 58, 2005 General Session*